



THE SENATE TASK FORCE ON BIDDING PROCESSES

2005 Recommendations

MISSION . . .

“To review and examine the process of state contracting in order to ensure an open and fair process for individuals desiring to compete for state business.”

*Senator Wayne Kuipers
Chairman*

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INTRODUCTION



This report is submitted by the Senate Task Force on Bidding Processes to the full Senate body for purposes of review and consideration of its recommendations regarding real estate bidding practices for the State of Michigan.

The Task Force on Bidding Processes was created late in 2004 by Senate Majority Leader Ken Sikkema and was charged with the responsibility to review how the state conducts itself in the real estate bidding process with the objective of making recommendations for potential changes in statute, rules, guidelines, or directives.

As the state has struggled in recent fiscal years, the Legislature has turned to the sale of surplus state property to assist in meeting its financial obligations. While numerous properties have been sold without problem, some of the more recent sales of such properties -- the State Fair, the Northville Psychiatric Hospital, and the York Township property have generated perceived problems which have resulted in litigation and protracted completion of these sales. Most recently, the Legislature became involved with the sale of the York property, also known as the Toyota land sale. The Legislature eventually addressed the issue of the sale of the York Township property in legislation.

This report is a product of public hearings regarding bidding practices of the departments which sell surplus property and what is considered the “best value” for Michigan.

The Task Force on Bidding Processes held four public hearings and, after taking testimony and comments from the Department of Management and Budget (DMB), the Department of Transportation (MDOT), the Department of Natural Resources (DNR), and the Department of Military and Veteran Affairs (DMVA), has issued a series of recommendations which could serve as a catalyst for how the state of Michigan does business in the sale of its surplus real estate.

EXECUTIVE SUMMARY

Charged with the responsibility of reviewing and examining the bid process for surplus real property, the Senate Task Force on Bidding Processes (Task Force) held a series of four public hearings in which the various state departments responsible for selling surplus property testified.

In those hearings, the Task Force learned that while the real estate and occupancy functions of other state departments were consolidated under Executive Order No. 2002-20, issued under former Governor John Engler, there were unresolved issues that were being addressed by the Department of Management and Budget (DMB), the Michigan Department of Natural Resources (MDNR), the Michigan Department of Transportation (MDOT), and the Michigan Military and Veteran Affairs (DMVA) who were exempted from Executive Order 2002-20. Some of these issues centered on inconsistencies in conveyance language, questions surrounding the mineral and gas rights of transferred property, expediting the closing process, a review of occupancy rates and needs, and determination of “best value” for Michigan.

The Task Force learned much about how the state conducts its bidding process for surplus land. While generally using today's technology for posting and advertising surplus property, each department uses different techniques to reach the public. Each department testified as to current bidding practices for surplus property and offered recommendations to make the bid process better to ensure that it was open and fair and the best value for the state of Michigan.

This report provides a list of recommendations offered to the Senate for its review and consideration of ways to improve the way the state conducts its bid process in the sale of surplus lands.

The Task Force would like to thank those individuals who testified and participated in these proceedings. A special acknowledgment to Spencer Sattler, Senator Wayne Kuipers Office, and Shelly Edgerton, Deputy Senate Majority Counsel, for their efforts in the writing, editing, and compilation of this report.

GENERAL DISCUSSION OF DEPARTMENTAL SURPLUS PROPERTY MANAGEMENT

Department of Management and Budget

The Department of Management and Budget's (DMB) authority to dispose of property is derived from the terms and conditions of state statutes. Specifically, the DMB is empowered by the DMB Act (PA 431 of 1984) as amended in 1988, which establishes the procedures under which it operates. It is also bound by PA 183 of 1964, which provides the financing mechanism for construction projects involving colleges, universities, correctional facilities, and other state buildings. Finally, the department is also controlled by legislative conveyance acts.

As outlined in the DMB's recommended standardized conveyance language (Appendix A), the department utilizes several methods in the land conveyance process: competitive bidding, public auction, use of real estate brokerage services, bartered exchange, and below market value offers to local units of government. In all conveyances, the department is charged with realizing the best value. At a minimum, the sale must be equal to or above the fair market value as determined by an independent appraiser. Local units of government are the exception; they are eligible to receive property for a nominal fee provided it is designated for public use and is available, on equal terms, to all members of the public.

Perhaps the most common sales practice is the competitive bidding process. The department establishes market value, public notice is provided, and bidding begins at market value. If the department does not receive any bids on a piece of property, it will typically have the property reappraised. Furthermore, the department retains the right to keep the property after the bidding process. For example, if only one bid is submitted on any given sale, there is no guarantee that the bidder will be successful. Before awarding the bid, the department evaluates the offering price based on appraised value and if no bid is awarded the department will reopen bidding and engage in aggressive marketing.

The DMB's most innovative approach to property management involves a public/private partnership. In 2004, the DMB contracted with the Staubach Company (a private real estate group) to develop a strategic space plan and to cancel/renege existing state leases. Through this partnership, the department realized an estimated savings of \$12.9 million in 2004 alone. As such, the department hopes to retain the Staubach Company in a continuing effort to cut facility and lease costs.

Michigan Department of Transportation

The Michigan Department of Transportation (MDOT) is authorized by the Uniform Condemnation Procedures Act, Public Act 87 of 1980, to sell property no longer used for transportation purposes. At the same time, Public Act 286 of 1964 authorizes the Transportation Commission to acquire and sell property for transportation purposes. Moreover, all property sold by MDOT, or other county agencies, must be sold at fair market value and the proceeds deposited into the transportation fund of the agency that made the sale.

In addition to state regulations, federal regulations sometimes require federal approval of sales. These regulations also mandate that sale proceeds be used for transportation purposes. Consequently, it has been the department's practice to dedicate all proceeds to transportation purposes.

Both the State Transportation Commission and the State Administrative Board oversee the department's disposal of excess property. The State Transportation Commission is authorized to acquire and sell property for transportation purposes and is responsible for approving/denying all sales transactions over \$100,000. On the other hand, the State Administrative Board is responsible for reviewing all disposal transactions regardless of the dollar amount, whether it is a sale, exchange, or relinquishment.

Generally, MDOT receives external requests (either from the public, legislators, municipalities, or developers) to review their inventory or existing right-of-ways to determine if it can be considered excess. However, MDOT occasionally performs internal county-wide reviews. All the various disciplines within the department (e.g., transportation services, traffic and safety, and environmental) evaluate the property under review to determine if there is a current or possible future need for it. If they determine that there is a need, the property is placed on hold. Otherwise, they proceed with the sale.

First, the department appraises the property. It may hire a private appraiser or utilize trained staff to perform the appraisal. The appraiser considers all possible uses in ascertaining fair market value. In some cases, usually those involving high value properties, the appraiser enters into discussions with the local zoning board in an effort to evaluate all possible uses before valuing the property. However, MDOT generally accepts current zoning for most sales.

Second, once fair market value has been established, the property is offered to state agencies and then to other governmental agencies. If neither is interested in the property, the property is made available to the public. Typically, these properties are offered through auction or negotiated sale. The State Transportation Commission (for proposals of \$100,000 or more) and the State Administrative Board must review all proposals before approval is granted. The Attorney General's office assists with the closing process by approving as to legal form and content the quitclaim deed. Revenue generated from the sale of the property is deposited into the applicable transportation fund.

Department of Natural Resources

The Department of Natural Resources (DNR) manages approximately 4.5 million acres of land and almost 7 million acres of mineral rights. Of the 4.5 million acres, 3.8 million are considered state forests. Approximately 280,000 acres of state land are dedicated state parks and recreation areas, while 400,000 acres are dedicated state game areas. The department also manages 244 miles of designated trails and 1,300 boating and public water access sites.

Most of the state forests were acquired through tax reversion in the early- to mid-twentieth century. In fact, much of the land was reverted to the state numerous times before being held for public use. Although only a small portion of state forests was purchased with restricted funds, the majority of the state game areas, parks, and recreation areas were purchased with federal dollars, state restricted funds, fish and game funds, and Natural Resource Trust Fund money. Many of these funding sources included restrictions as to how the property was to be managed.

The DNR has embarked on a comprehensive land review/consolidation process. Its goal is to protect the natural resources and cultural features of the land while continuing to provide for outdoor recreational use. It also seeks to facilitate effective management by creating large blocks of property. In many cases, particularly in southern Michigan, public ownership is intermixed with private ownership, and it costs significantly more to manage these properties than it does to manage consolidated land. Furthermore, when public ownership is consolidated, it benefits the public by increasing recreational opportunities, and it benefits neighboring land owners by decreasing the risk of trespass.

The DNR has recently completed the first phase of a multi-phase process. The first phase involved a widespread review of its boundaries. According to its acquisition strategy, the department examined boundaries, endeavoring to consolidate certain land holdings and eliminate or reduce others. Specifically, its strategy was to acquire private lands within state forest boundaries and sell property outside those boundaries. While the department is not seeking to purchase additional acreage, it is attempting to strategically buy and sell property to improve the efficiency of their land management program.

During Phase II, the department will examine property that falls outside of its created boundaries. That is, it will evaluate each parcel to determine if it should continue to manage those lands or release them. Before the department elects to relinquish property, it evaluates its natural resource value to determine whether to transfer the land to certain conservation partners or governmental entities in order to protect the property. However, if that is not a viable option, a public buyer is sought. In an attempt to notify the public, the department plans to hold public meetings in each county where lands are identified for sale. Also, the public is notified after the director approves a sale or exchange and it is placed on the Natural Resources Commission agenda.

As for mineral rights, the DNR rarely retains mineral rights but generally releases them with the surface rights. However, there are exceptions. For example, the department retains all mineral rights on islands to prevent the development of minerals which could disrupt the delicate nature of their environments. Also, it typically performs an evaluation of all minerals before it relinquishes a parcel to determine the probability of mineral development. If minerals are found that are likely to be extracted, it factors the mineral

value into the purchase price. If oil and gas are found, it is likely to retain the mineral rights. The profit from the sale of other minerals is deposited into the trust fund according to constitutional requirements.

Michigan Department of Military and Veterans Affairs

The Michigan Department of Military and Veteran Affairs (DMVA) is authorized by Public Act 307 of 1992 to dispose of excess armories, facilities, or lands under the jurisdiction of the state military if in the State Military Board's judgment the facilities and lands are no longer required for Michigan National Guard purposes.

As outlined in its testimony to the Task Force, the DMVA has a set process for the disposal of surplus property. The DMVA secures the permission of the State Military Board for approval after determining that surplus property exists. An appraisal of the property is done by outside appraisers. The DMVA is precluded by statute from accepting any bid lower than the fair market value. There are no restrictions on the use of the property when sold; i.e., only for "a public purpose or good." The DMVA generally offers the property to local communities first and then offers the property through a public bid process. The property is generally advertised through statewide and local newspapers, and the department may use an "Open House" marketing tool at an armory that is for sale.

Like other departments, the DMVA's deed transfer and a review of the property for historical significance, especially for armories, go through the Attorney General's office, State Preservation Office, and State Administrative Board before a sale can be consummated. The funds received from the sale of surplus property are returned to the Military Building Fund. If any armories are closed and sold before a 25-year period ends and federal funds were used to construct the armories, the federal government must be repaid.

Since the Department's testimony before the Task Force, the Governor has issued Executive Order 2005-5 which has eliminated the State Military Board. Functions related to determining surplus property are now handled by the Adjutant General for the Department of Military and Veteran Affairs.

RECOMMENDATIONS

Based on testimony, discussions with the Departments and formal conversations between members of the Task Force, the Senate Task Force on State Bidding Processes makes the following recommendations:

1. "One Stop Shopping for Buyers -- Creation of a central gateway for buyers."

- The DNR, DMB, MDOT, and the DMVA all have their own real estate division. Prospective buyers are forced to contact all four departments for a complete inventory of all state real estate.
- As such, it is suggested that a central gateway for buyers be created. While there was concern that consolidating all real estate functions into one department would be unworkable, as all the departments operate under different authorizing acts, the departments agreed that a central Web site would provide a helpful one-stop shop for interested buyers.
- Since the conclusion of the hearings, a Web site is now available at www.michigan.gov/land-sales. It is also available on the DMB's home page.

2. Standardize Conveyance Language.

- Require a standard template to be used by all agencies regarding the conveyance of land. Not all conveyances are the same; there are often extenuating circumstances, but at least standardization of most, if not all, language would address the issue of lack of uniformity. A business person who wants to know what is for sale will know how to access this information.
- Mandating standardized conveyance procedures will allow the public to access the information in an easy and effective manner.

The DMB, in consultation with the Attorney General's office, has drafted this language and requests that legislators use this language as a model template for any future legislation introduced to convey state property (Appendix A).

3. Require DMB and/or AG analysis and recommendation before passage of land conveyance legislation.

- In cases where the Legislature bypasses the standard administrative bid process for the sale of land through a statutory conveyance bill, there is often no analysis by departmental staff or the AG's office that may be required to address conflicts, if any, for completion of the conveyance.
- This will not erode the Legislature's oversight authority but will allow the AG and the DMB to advise the Legislature of possible complications such as

mineral rights, restrictive covenants, value of the property, or zoning issues relating to the conveyance.

4. Require local units of government to disclose all allowable uses of the property within sixty days after the state notifies them of the pending sale.
 - As evidenced by the complications arising out of the sale of the Northville property, local zoning is often an added burden that complicates the completion of a sale of the surplus property. Early notice by the local government may provide the state the needed tools to market the property for development.
5. Standardize language for payment of fees as a result of the real estate transaction for all the departments.
 - There is inconsistency in conveyance statutes regarding the recovering of fees associated with the real estate transaction and how these fees should revert back to the departments. These fees may include such things as appraisals, marketing, and legal. Standardizing the language regarding how to reimburse a department for such expenditures will allow for better accounting and transition of the property.
6. Require standardized ethical guidelines with regard to conflict of interest disclosures and confidentialities established by the DMB for all departments handling surplus property.
 - There are currently in place requirements for employees to disclose conflict of interests in business dealings. The DMB suggested, and the Task Force recommends, greater utilization of these requirements as well as application to all departments handling surplus property sales.
7. Consideration of debt restructuring for state properties.
 - The DMB is currently reviewing the debt structure of the state's holdings to determine if restructuring will result in a cost savings.
8. Require the departments to notify the Legislature through the Secretary of the Senate and Clerk of the House when surplus property is put out for bid and when bids are rejected.
 - DMB currently issues a press release regarding the bid process which is not always widely distributed to the Legislature.
 - Because the Legislature is sometimes called upon to address who might receive surplus property, it may be in the best interest for the Legislature to have advance notice of these types of pending actions and any issues surrounding the process before legislative action is needed.

- Similar to the process used with the Joint Committee on Administrative Rules (JCAR), the Secretary of the Senate and Clerk of the House would serve as a clearing house for department notices for the bid process thereby allowing the Legislature to be kept apprised of all property being sold rather than as current practice whereby a Legislator is notified if the piece of property is being sold in his or her district. The Legislature, through a standing committee, could request a department to come before it to ask questions if the committee felt it was needed regarding a particular sale or bid process.

APPENDIX A

Standard Conveyance Language Draft Final Draft -- March 15, 2005

AN ACT to authorize the state administrative board to convey a certain parcel (certain parcels) of state owned property in _____ County (various counties); to prescribe conditions for the conveyance(s); to provide for certain powers and duties of certain state departments in regard to the property; to provide for disposition of revenue derived from the conveyance(s); *and to repeal acts and parts of acts.*

The People of the State of Michigan enact:

- (1) The state administrative board, on behalf of the state and subject to the terms stated in this section, may convey by quitclaim deed for not less than fair market value or a fair exchange of value for value, all or portions of certain state owned property now under the jurisdiction of the department of _____, commonly known as _____, and located in the city of _____, county of _____, Michigan, and more particularly described as follows:

[INCLUDE LEGAL DESCRIPTION], containing [] acres, more or less.
- (2) The description of the property in subsection 1 is approximate and for purposes of the conveyance, is subject to adjustments as the state administrative board or the attorney general considers necessary by survey or other legal description.
- (3) The property described in subsection 1 shall include all surplus, salvage and scrap property or equipment.
- (4) The fair market value of the property described in subsection 1 shall be determined by an appraisal prepared for the department of management and budget by an independent appraiser.
- (5) The department of management and budget shall take the necessary steps to prepare to convey the property described in subsection 1 using any of the following at any time:
 - a) Competitive bidding designed to realize the best value to the state, as determined by the department of management and budget.
 - b) A public auction designed to realize the best value to the state, as determined by the department of management and budget.
 - c) Use of real estate brokerage services designed to realize the best value to the state, as determined by the department of management and budget.
 - d) A value for value conveyance negotiated by the department of management and budget designed to realize the best value to the state. In determining whether

- value for value consideration for the property represents the best value, the department may consider the fair market value or the total value based on any positive economic impact to the state likely to be generated by the proposed use of the property, especially economic impact resulting in the creation of jobs or increased capital investment in the state.
- e) Offer the property for sale for fair market value to a local unit or units of government.
 - f) Offer the property for sale for less than fair market value to a local unit or units of government subject to subsection (7).
- (6) The department of attorney general shall approve as to legal form the quitclaim deed authorized by this act.
- (7) Any conveyance to a local unit of government authorized by subsection (5)(f) shall provide for all of the following:
- a) The property shall be used exclusively for public purposes and if any fee, term, or condition for the use of the property is imposed on members of the public, or if any of those fees, terms, or conditions are waived for use of this property, all members of the public shall be subject to the same fees, terms, conditions, and waivers.
 - b) In the event of an activity inconsistent with subsection (a), the state may reenter and repossess the property, terminating the grantee's or successor's estate in the property.
 - c) If the grantee or successor disputes the state's exercise of its right of reentry and fails to promptly deliver possession of the property to the state, the attorney general, on behalf of the state, may bring an action to quiet title to, and regain possession of, the property.
 - d) If the state reenters and repossesses the property, the state shall not be liable to reimburse any party for any improvements made on the property.
- (8) If the local unit of government intends to convey the property within ____ (__) years of the conveyance from the state, the local unit shall provide notice to the department of management and budget of its intent to offer the property for sale. The department of management and budget shall retain a right to first purchase the property at the original sale price within ninety (90) days of the notice. In the event that the state waives its first refusal right, the local unit of government shall pay to the state forty percent (40%) of the difference between the sale price of the conveyance from the state and the sale price of the local unit's subsequent sale(s) to a third party.
- (9) The state shall not reserve oil, gas or mineral rights to the property conveyed under this section. However, the conveyance authorized under this section shall provide that, if the purchaser or any grantee develops any oil, gas or minerals found on, within, or under the conveyed property, the purchaser or any grantee shall pay the state one half (½) of the gross revenue generated from the

development of the oil, gas or minerals. This payment shall be deposited in the General Fund.

- (10) The state reserves all aboriginal antiquities including mounds, earthworks, forts, burial and village sites, mines, or other relics lying on, within, or under the property with power to the state and all others acting under its authority to enter the property for any purpose related to exploring, excavating, and taking away the aboriginal antiquities.
- (11) The net revenue received from the sale of property under this section shall be deposited in the state treasury and credited to the general fund. As used in this subsection, "net revenue" means the proceeds from the sale of the property less reimbursement for any costs to the state associated with the sale of property including, but not limited to, costs of reports and studies and other materials necessary to the preparation of sale, environmental remediation, legal fees, and any litigation related to the conveyance of the property.

OPTIONAL: SALE TO LOCAL UNITS OF GOVERNMENT FOR LESS THAN FMV AS FIRST ACTION

- (12) Before offering the property described in subsection 1 for public sale, the director of the department of management and budget shall first offer all or portions of the property for sale for less than fair market value to the local units of government in which the property is located subject to the provisions in subsection (7).